

Agenda

Item #8



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: July 14, 2008

Re: Annual Disclosure Statements for Members of the Ethics Commission

In October 2007, the Ethics Commission Chair Michael Friedman received a telephone call from a member of the Maine Legislature asking whether Commission members would consider voluntarily filing annual disclosure statements that would disclose political activities that might constitute a conflict of interest. At the suggestion of the Commission members, the staff prepared a draft form for the annual disclosure statement. At the Commission's December 7, 2007 meeting, the Commission voted to table the matter until it was considered by the Legislature in the 2008 session.

The Speaker of the Maine House of Representatives, Glenn Cummings, included the concept of an annual disclosure statement for Ethics Commission members in his 2008 legislative ethics bill. The Legal and Veterans Affairs Committee inserted the requirement in another bill (campaign finance legislation that had been proposed by the Commission). This legislation was enacted as Chapter 571 of the Public Laws of 2007.

Chapter 571 enacted the annual disclosure requirement in a new Section 2-B of 1 M.R.S.A. § 1002. I have attached a version of § 1002 as amended, and a copy of Chapter 571.

For your consideration, the staff has attached a proposed reporting form that could be used for the annual disclosure statement.

Also, for your information, the Legislature adopted in Chapter 571 new standards for what is a conflict of interest for a member of the Ethics Commission and a provision setting forth how a member of the Commission may be removed. These new provisions can be found in new Sections 2-A and 7 of 1 M.R.S.A. § 1002.

The Legislature accepted a proposal from the Commission that it should be able to meet by telephone on notice to the affected parties to address procedural or logistical issues relating to an upcoming meeting. This new authorization is in Section 5 of Chapter 571, and was added to 21-A M.R.S.A. § 1002(2)(B).

Thank you for your consideration of the form for the annual disclosure statement.

**DRAFT**Website: www.maine.gov/ethics

Phone: 207-287-4179

Fax: 207-287-6775

2008 ANNUAL DISCLOSURE STATEMENT FOR COMMISSION MEMBERS

Covering January 1, 2008 – December 31, 2008

Due: February 15, 2009

COMMISSION MEMBER INFORMATION

Name

OCCUPATION AND EMPLOYER INFORMATION

Occupation

Employer Name

Employer Address

City

State

CANDIDACY FOR POLITICAL OFFICE

Have you been a candidate for any elective office within the past year? If so, please list below.

NAME OF OFFICE

PLEASE INDICATE COUNTY, STATE, OR FEDERAL OFFICE

POSITIONS WITH POLITICAL COMMITTEES

If you, your spouse, or domestic partner served as an officer, director, or primary decision-maker or fundraiser for any authorized candidate committees, political action committees, ballot question committees, or party committees during 2008, please identify the political committee and position held.

NAME OF POLITICAL COMMITTEE
AND POSITION HELDPOSITION HELD BY:
(PLEASE CHECK THE APPROPRIATE BOX)

NAME OF COMMITTEE:

POSITION HELD:

☐ SELF ☐ SPOUSE/DOMESTIC PARTNER

NAME OF COMMITTEE:

POSITION HELD:

☐ SELF ☐ SPOUSE/DOMESTIC PARTNER

NAME OF COMMITTEE:

POSITION HELD:

☐ SELF ☐ SPOUSE/DOMESTIC PARTNER

NAME OF COMMITTEE:

POSITION HELD:

☐ SELF ☐ SPOUSE/DOMESTIC PARTNER

POSITIONS WITH COMMERCIAL ORGANIZATIONS

Please list all commercial organizations for which you, your spouse, or domestic partner are an owner, officer, director, or primary decision-maker or fundraiser if the organization spent more than \$1,500 during 2008 to influence an election for state, county, or municipal office, or a local or statewide ballot question in Maine, or employed a lobbyist who was required to register with the Commission.

NAME OF COMMERCIAL ORGANIZATION AND POSITION HELD	POSITION HELD BY: (PLEASE CHECK THE APPROPRIATE BOX)
NAME OF ORGANIZATION: POSITION HELD:	<input type="checkbox"/> SELF <input type="checkbox"/> SPOUSE/DOMESTIC PARTNER
NAME OF ORGANIZATION: POSITION HELD:	<input type="checkbox"/> SELF <input type="checkbox"/> SPOUSE/DOMESTIC PARTNER

POSITIONS WITH NON-PROFIT OR OTHER ORGANIZATIONS

Please list all non-profit organizations, community groups, or other organizations based in Maine for which you, your spouse, or domestic partner are an officer, director, or primary decision-maker or fundraiser if the organization spent more than \$1,500 during 2008 to influence an election for state, county, or municipal office, or a local or statewide ballot question in Maine, or employed a lobbyist who was required to register with the Commission.

NAME OF NON-PROFIT OR OTHER ORGANIZATION AND POSITION HELD	POSITION HELD BY: (PLEASE CHECK THE APPROPRIATE BOX)
NAME OF ORGANIZATION: POSITION HELD:	<input type="checkbox"/> SELF <input type="checkbox"/> SPOUSE/DOMESTIC PARTNER
NAME OF ORGANIZATION: POSITION HELD:	<input type="checkbox"/> SELF <input type="checkbox"/> SPOUSE/DOMESTIC PARTNER

POLITICAL FUNDRAISING AND CANDIDATE ENDORSEMENTS

If you endorsed a political candidate or engaged in any political fundraising to promote the election or defeat of a candidate or the passage or defeat of a ballot question in Maine during 2008, please identify the candidate or ballot question. Do not include candidates at the county or municipal level, or out-of-state non-federal elections.

NAME OF CANDIDATE OR BALLOT QUESTION

ADDITIONAL COMMENTS

Please indicate whether you are involved with any organizations or in any activities, not listed above, which could give rise to an appearance of a conflict of interest with regard to your role as a Commission member.

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Please sign and date.

<hr/> SIGNATURE	<hr/> DATE
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Please see
§1002 (2-B),
on page 4.

CHAPTER 25
GOVERNMENTAL ETHICS

SUBCHAPTER I
STATEMENT OF PURPOSE

1 § 1001. Statement of purpose

It is essential under the American system of representative government that the people have faith and confidence in the integrity of the election process and the members of the Legislature. In order to strengthen this faith and confidence that the election process reflects the will of the people and that each Legislator considers and casts his vote on the enactment of laws according to the best interests of the public and his constituents, there is created an independent commission on governmental ethics and election practices to guard against corruption or undue influencing of the election process and against acts or the appearance of misconduct by Legislators.

1 § 1002. Commission on Governmental Ethics and Election Practices

1. Membership. The Commission on Governmental Ethics and Election Practices, established by Title 5, section 12004-G, subsection 33 and referred to in this chapter as the "commission," consists of five members appointed as follows.

A. As needed, the Governor, the President of the Senate, the Senate Minority Leader, the Speaker of the House and the House Minority Leader shall jointly establish and publish a nomination period during which members of the public, groups and organizations may nominate qualified individuals to the Governor for appointment to the commission.

B. The Governor shall appoint the members of the commission, taking into consideration nominations made during the nomination period, subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature. No more than two (2) commission members may be enrolled in the same political party.

C. Appointees are appointed to serve four-year terms. A person may not serve more than two terms.

D. The commission members shall elect one member to serve as chair for at least a two-year term.

E. A vacancy during an unexpired term must be filled as provided in this subsection for the unexpired portion of the term only.

F. This subsection is repealed January 1, 2002.

1-A. Membership. The Commission on Governmental Ethics and Election Practices, established by Title 5, section 12004-G, subsection 33 and referred to in this chapter as the "commission," consists of five members appointed as follows.

A. By December 1, 2001 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives jointly shall establish and advertise a 30-day period to allow members of the public and groups and organizations to propose qualified individuals to be nominated for appointment to the commission.

B. By January 1, 2002 and as needed after that date, the appointed leader from each political party in the Senate and the appointed leader from each political party in the House of Representatives each shall present a list of three qualified individuals to the Governor for appointment of 4 members to the commission. The appointed leadership from each party in both bodies of the Legislature jointly shall present a list of three qualified individuals to the Governor for appointment of a fifth member to the commission.

C. By March 15, 2002, the Governor shall appoint the members of the commission selecting one member from each of the lists of nominees presented in accordance with paragraph A. These nominees are subject to review by the joint standing committee of the Legislature having jurisdiction over legal affairs and confirmation by the Legislature. No more than two (2) commission members may be enrolled in the same party.

D. Two initial appointees are appointed for one-year terms, two are appointed for two-year terms and one is appointed for a three-year term, according to a random lot drawing under the supervision of the Secretary of State. Subsequent appointees are appointed to serve three-year terms. A person may not serve more than two terms.

E. The commission members shall elect one member to serve as chair for at least a two-year term.

F. Upon a vacancy during an unexpired term, the term must be filled as provided in this paragraph for the unexpired portion of the term only. The nominee must be appointed by the Governor from a list of three (3) qualified candidates provided by the leader of the party from the body of the Legislature that suggested the appointee who created the vacancy. If the vacancy during an unexpired term was created by the commission member who was appointed from the list of candidates presented to the Governor by the leaders of each party of each body of the Legislature jointly, the nominee must be appointed from a list of three (3) qualified candidates provided jointly by the leaders of each party of each body of the Legislature. If the list of three (3) qualified candidates required by this paragraph to be presented to the Governor by the leaders of each party from each body of the Legislature is not produced within 60 days after the vacancy is created, then the leaders of each party from both bodies of the Legislature shall present within the subsequent 15 days a separate list of three (3) qualified candidates to the Governor, who shall appoint a candidate from these lists within 30 days of receiving the lists. Nominees appointed pursuant to this paragraph are subject to review by the joint standing committee of the Legislature having

jurisdiction over election practices and legislative ethics and to confirmation by the Legislature.

G. Upon a vacancy created by an expired term, the vacancy must be filled as provided in this paragraph. The nominee must be appointed by the Governor from a list of 3 qualified candidates provided by the leader of the party from the body of the Legislature that suggested the appointee whose term expired. When a vacancy is created by an expired term of the commission member who was appointed from the list of candidates presented to the Governor by the leaders of each party of each body of the Legislature jointly, the nominee must be appointed from a list of three (3) qualified candidates provided jointly by the leaders of each party of each body of the Legislature. If the list of three (3) qualified candidates required by this paragraph to be presented to the Governor by the leaders of each party from each body of the Legislature is not produced within 60 days after the vacancy is created, then the leaders of each party from both bodies of the Legislature shall present within the subsequent 15 days a separate list of three (3) qualified candidates to the Governor, who shall appoint a candidate from these lists within 30 days of receiving the lists. Nominees appointed pursuant to this paragraph are subject to review by the joint standing committee of the Legislature having jurisdiction over election practices and legislative ethics and to confirmation by the Legislature.

H. For the purposes of this subsection, "political party" has the same meaning as "party" as defined by Title 21-A, section 1, subsection 28.


2. Qualifications. The members of the commission must be persons of recognized judgment, probity and objectivity. A person may not be appointed to this commission who is a member of the Legislature or who was a member of the previous Legislature, who was a declared candidate for an elective county, state or federal office within two years prior to the appointment or who now holds an elective county, state or federal office. A person may not serve on the commission who is an officer, director, employee or primary decision maker of a party committee, political action committee or candidate committee authorized under Title 21-A, section 1013-A, subsection 1, paragraph B.

2-A. Conflict of interest. This subsection covers conflicts of interest of members of the commission.

A. A member of the commission has a conflict of interest in a matter before the commission if the member has a business or close political relationship with a party to the matter. A close political relationship exists when a member has significant past or ongoing involvement with a political committee or a candidate, as defined in Title 21-A, section 1, subsection 30 and subsection 5, respectively, or other organization involved in the matter, that would lead a reasonable person to believe that the member is unable to objectively consider the matter. A close political relationship is not created by making a contribution to a political committee, organization or candidate; party enrollment status; or mere membership in an organization involved in the matter.

B. If members of the commission have a conflict of interest in a matter before the commission, the members shall recuse themselves from the matter and may not vote on or attempt to influence the outcome of the matter. Whether or not recusal is required

under this paragraph, members of the commission shall consider recusing themselves from any matter that would give rise to an appearance of a conflict of interest.

 **2-B. Annual disclosure statement.** Each member shall file a disclosure statement with the executive director of the commission by February 15th of each year, which must include:

A. The names of and the positions held in all candidate committees, political action committees, ballot question committees and party committees of which the member or the member's spouse or domestic partner was an officer, director or primary decision maker or fund raiser during the previous calendar year;

B. The names of and positions held in all nonprofit or commercial organizations of which the member or the member's spouse or domestic partner was an owner, officer, director or primary decision maker or fund raiser that, during the previous calendar year, made expenditures of more than \$1,500 to influence an election or employed a lobbyist who was required to register with the commission; and

C. Any additional information that the commission determines appropriate.

A member shall notify the executive director if the member becomes an officer, director, employee or primary decision maker or fund raiser of a party committee, political action committee, ballot question committee or candidate committee within 21 days of the event.

3. Oath. Each member shall, within 10 days of his appointment, take an oath of office to faithfully discharge the duties of a commissioner in the form prescribed by the Constitution. Such oath shall be subscribed to by the commissioner taking it, certified by the officer before whom it is taken and immediately filed in the Office of the Secretary of State.

4. Legislative per diem. The members of the commission are entitled to receive legislative per diem according to Title 5, chapter 379.

5. Employees. The commission shall employ an executive director and such other assistance as may be necessary to carry out its duties. The commission also shall retain a general counsel or a computer analyst as an employee of the commission, based on the staffing needs of the executive director. If the Commission employs a general counsel, the general counsel may not hold any other state office or otherwise be employed by the State. The commission shall select the executive director by an affirmative vote of at least 4 commission members.

6. Prohibited activities. A member of the commission may not engage in political fund-raising to promote the election or defeat of a candidate, passage or defeat of a ballot measure or endorse a political candidate. This prohibition does not apply to fund-raising for campaigns or endorsement of candidates at the county or municipal level or out-of-state nonfederal elections.

7. Removal of members. A member of the commission may be removed by the Governor for inefficiency, willful neglect of duty, malfeasance in office, engaging in prohibited activities or failure to continually meet the qualifications set out by this section

or to comply with the disclosure requirements, but only with the review and concurrence of the joint standing committee of the Legislature having jurisdiction over election practices and legislative ethics upon hearing in executive session, or impeachment by the Legislature. Before removing a board member, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives of the removal and the reasons for the removal.

1 § 1003. Procedures, rules and regulations

1. Procedures, rules and regulations. The commission shall adopt such procedures, rules and regulations as may appear necessary for the orderly, prompt, fair and efficient carrying out of its duties, consistent with this chapter.

2. Records. Except as provided in section 1013, all records of the commission, including business records, reports made to or by the commission, findings of fact and opinions, must be made available to any interested member of the public who may wish to review them. Any member of the public may request copies of any record held by the commission that is available for public inspection. The commission shall furnish these copies upon payment of a fee covering the cost of reproducing them.

1 § 1004. Meetings

The commission shall meet on the call of the Speaker of the House or the President of the Senate to perform the duties required of it or as specifically provided in this chapter. The commission shall also meet at other times at the call of the chair or at the call of a majority of the members, provided all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

1 § 1005. Open meetings

Notwithstanding chapter 13 and except as provided in section 1013, subsection 3-A, all meetings, hearings or sessions of the commission are open to the general public unless, by an affirmative vote of at least three (3) members, the commission requires the exclusion of the public.

1 § 1006. Assistance

The commission may call for the aid or assistance in the performance of its duties on the Attorney General, Secretary of State, Department of Audit or any law enforcement agency in this State. When called upon, these agencies shall comply to the utmost of their ability.

PLEASE NOTE: The Office of the Revisor of Statutes **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Public Law
123rd Legislature
Second Regular Session
Chapter 571
H.P. 1454 - L.D. 2070

An Act To Improve the Campaign Finance Laws and Their Administration

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, legislation enacted during the First Regular Session of the 123rd Legislature created an error in statute regarding qualifying contributions under the Maine Clean Election Act; and

Whereas, proper oversight of the collection of qualifying contributions is necessary to ensure appropriate distribution of taxpayer funds under the Maine Clean Election Act; and

Whereas, the 2008 election cycle for candidates for the 124th Legislature is already underway; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §1002, sub-§2, as amended by PL 2005, c. 271, §1, is further amended to read:

2. Qualifications. The members of the commission must be persons of recognized judgment, probity and objectivity. A person may not be appointed to this commission who is a member of the Legislature or who was a member of the previous Legislature, who was a declared candidate for an elective county, state or federal office within 2 years prior to the appointment, or who now holds an elective county, state or federal office, who is an officer of a political committee, party committee or political action committee or who holds a position in a political party or campaign. A person may not serve on the commission who is an officer, director, employee or primary decision maker of a party committee, political action committee or candidate committee authorized under Title 21-A, section 1013-A, subsection 1, paragraph B.

Sec. 2. 1 MRSA §1002, sub-§2-A is enacted to read:

2-A. Conflict of interest. This subsection governs conflicts of interest of members of the commission.

A. A member of the commission has a conflict of interest in a matter before the commission if the member has a business or close political relationship with a party to the matter. A close political

relationship exists when a member has significant past or ongoing involvement with a political committee or a candidate, as defined in Title 21-A, section 1, subsection 30 and subsection 5, respectively, or other organization involved in the matter, that would lead a reasonable person to believe that the member is unable to objectively consider the matter. A close political relationship is not created by making a contribution to a political committee, organization or candidate; party enrollment status; or mere membership in an organization involved in the matter.

B. If members of the commission have a conflict of interest in a matter before the commission, the members shall recuse themselves from the matter and may not vote on or attempt to influence the outcome of the matter. Whether or not recusal is required under this paragraph, members of the commission shall consider recusing themselves from any matter that would give rise to an appearance of a conflict of interest.

Sec. 3. 1 MRSA §1002, sub-§2-B is enacted to read:

* **2-B. Annual disclosure statement.** Each member shall file a disclosure statement with the executive director of the commission by February 15th of each year, which must include:

A. The names of and the positions held in all candidate committees, political action committees, ballot question committees and party committees of which the member or the member's spouse or domestic partner was an officer, director or primary decision maker or fund raiser during the previous calendar year;

B. The names of and positions held in all nonprofit or commercial organizations of which the member or the member's spouse or domestic partner was an owner, officer, director or primary decision maker or fund raiser that, during the previous calendar year, made expenditures of more than \$1,500 to influence an election or employed a lobbyist who was required to register with the commission; and

C. Any additional information that the commission determines appropriate.

A member shall notify the executive director if the member becomes an officer, director, employee or primary decision maker or fund raiser of a party committee, political action committee, ballot question committee or candidate committee within 21 days of the event.

Sec. 4. 1 MRSA §1002, sub-§7 is enacted to read:

7. Removal of members. A member of the commission may be removed by the Governor for inefficiency, willful neglect of duty, malfeasance in office, engaging in prohibited activities or failure to continually meet the qualifications set out by this section or to comply with the disclosure requirements, but only with the review and concurrence of the joint standing committee of the Legislature having jurisdiction over election practices and legislative ethics upon hearing in executive session, or impeachment by the Legislature. Before removing a board member, the Governor shall notify the President of the Senate and the Speaker of the House of Representatives of the removal and the reasons for the removal.

Sec. 5. 21-A MRSA §1002, as repealed and replaced by PL 2001, c. 667, Pt. A, §43, is repealed and the following enacted in its place:

§ 1002. Meetings of commission

1. Meeting schedule. The commission shall meet in Augusta for the purposes of this chapter at least once per month in any year in which primary and general elections are held and every 2 weeks in the 60 days preceding an election. In the 28 days preceding an election, the commission shall meet in Augusta within one calendar day of the filing of any complaint or question with the commission. Agenda items in the 28 days preceding an election must be decided within 24 hours of the filing unless all parties involved agree otherwise.

2. Telephone meetings. The commission may hold meetings over the telephone if necessary, as long as the commission provides notice to all affected parties in accordance with the rules of the commission and the commission's office remains open for attendance by complainants, witnesses, the press and other members of the public. Notwithstanding Title 1, chapter 13, telephone meetings of the commission are permitted:

A. During the 28 days prior to an election when the commission is required to meet within 24 hours of the filing of any complaint or question with the commission; or

B. To address procedural or logistical issues before a monthly meeting, such as the scheduling of meetings, deadlines for parties' submission of written materials, setting of meeting agenda, requests to postpone or reschedule agenda items, issuing subpoenas for documents or witnesses and recusal of commission members.

3. Other meetings. The commission shall meet at other times on the call of the Secretary of State, the President of the Senate, the Speaker of the House or the chair or a majority of the members of the commission, as long as all members are notified of the time, place and purpose of the meeting at least 24 hours in advance.

4. Office hours before election. The commission office must be open with adequate staff resources available to respond to inquiries and receive complaints from 8 a.m. until at least 5:30 p.m. on the Saturday, Sunday and Monday immediately preceding an election and from 8 a.m. until at least 8 p.m. on election day.

Sec. 6. 21-A MRSA §1003, sub-§3-A is enacted to read:

3-A. Confidential records. Investigative working papers of the commission are confidential and may not be disclosed to any person except the members and staff of the commission, the subject of the audit or investigation, other entities as necessary for the conduct of an audit or investigation and law enforcement and other agencies for purposes of reporting, investigating or prosecuting a criminal or civil violation. For purposes of this subsection, "investigative working papers" means documents, records and other printed or electronic information in the following limited categories that are acquired, prepared or maintained by the commission during the conduct of an investigation or audit:

A. Financial information not normally available to the public;

B. Information belonging to a party committee, political action committee, ballot question committee, candidate or candidate's authorized committee that, if disclosed, would reveal sensitive political or campaign information;

C. Information or records subject to a privilege against discovery or use as evidence; and

D. Intra-agency or interagency communications related to an audit or investigation.